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|----------------|------------|----------------------|--------------------|-----------------|
| 10/004,543     | 12/04/2001 | James H. Jannard     | OAKLY1172C1        | 8406            |

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EXAMINER

DANG, HUNG XUAN

ART UNIT PAPER NUMBER

2873

DATE MAILED: 04/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/004,543

Applicant(s)

JANNARD ET AL.

Examiner

Hung X Dang

Art Unit

2873

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b)

**Status**

1) Responsive to communication(s) filed on 01 April 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 2-10 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 2-10 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

1. The amendment filed on 4/1/03 has been entered.

### **Information Disclosure Statement**

2. The Information disclosure Statements filed on 4/1/03 has been considered.

### **Drawings**

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the telecommunication receiver, telecommunication transmitter, the power supply, the first and second earphones and the microphone as recited in claims 2-10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### **Claims Rejection Under 35 USC - 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2, 3 and 6-10 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by **Spitzer** (6,349,001).

Spitzer discloses industrial safety assembly including disposable ear protection and earphone which comprises a telecommunications receiver carried inside of the

eyeglass, telecommunications transmitter carried inside of the eyeglass, a battery carried by the eyeglass, a pair of earphones and a microphone is connected to an orbital.

### **Claims Rejection Under 35 USC - 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Spitzer** (6,349,001).

With regard to claim 4, Spitzer discloses industrial safety assembly including disposable ear protection and earphone which comprises a telecommunications receiver carried inside of the eyeglass, telecommunications transmitter carried inside of the eyeglass, a battery carried by the eyeglass, a pair of earphones and a microphone is connected to an orbital.

Spitzer does not disclose the storage device comprises an MP3 storage device.

However, the storage device comprises an MP3 storage device are well known in the art of the memory device for the purpose storage the music. Therefore, it would have been obvious to one skilled in the art to make the telecommunication spectacle, of Spitzer, include MP3 storage device for the purpose storage the music.

With regard to claim 5, Spitzer does not disclose the power supply is rechargeable.

However, the power supply is rechargeable are well known in the art of the power supply for the purpose reusing. Therefore, it would have been obvious to one skilled in the art to make the telecommunication spectacle, of Spitzer, include the power supply is rechargeable for the purpose reusing.

6. Any inquiry concerning this communication should be directed to Examiner Hung Dang at telephone number (703) 308-0550.

04/03



HUNG DANG

PRIMARY EXAMINER

ART UNIT 2873